

Federal Communications Commission

§ 76.802

Competition Act of 1992, section 10(a)), may adopt and enforce prospectively a written and published policy of prohibiting programming which, it reasonably believes, describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.

(b) A cable operator may refuse to transmit any leased access program or portion of a leased access program that the operator reasonably believes contains obscenity, indecency or nudity.

NOTE TO PARAGRAPH (b): "Nudity" in paragraph (b) is interpreted to mean nudity that is obscene or indecent.

[62 FR 28373, May 23, 1997, as amended at 64 FR 35950, July 2, 1999]

§ 76.702 Public access.

A cable operator may refuse to transmit any public access program or portion of a public access program that the operator reasonably believes contains obscenity.

[62 FR 28373, May 23, 1997]

Subpart M—Cable Inside Wiring

§ 76.800 Definitions.

(a) *MDU*. A multiple dwelling unit building (e.g., an apartment building, condominium building or cooperative).

(b) *MDU owner*. The entity that owns or controls the common areas of a multiple dwelling unit building.

(c) *MVPD*. A multichannel video programming distributor, as that term is defined in Section 602(13) of the Communications Act, 47 U.S.C. 522(13).

(d) *Home run wiring*. The wiring from the demarcation point to the point at which the MVPD's wiring becomes devoted to an individual subscriber or individual loop.

[62 FR 61031, Nov. 14, 1997]

§ 76.801 Scope.

The provisions of this subpart set forth rules and regulations for the disposition, after a subscriber voluntarily terminates cable service, of that cable home wiring installed by the cable system operator or its contractor within the premises of the subscriber. The provisions do not apply where the cable

home wiring belongs to the subscriber, such as where the operator has transferred ownership to the subscriber, the operator has been treating the wiring as belonging to the subscriber for tax purposes, or the wiring is considered to be a fixture by state or local law in the subscriber's jurisdiction. Nothing in this subpart shall affect the cable system operator's rights and responsibilities under § 76.617 to prevent excessive signal leakage while providing cable service, or the cable operator's right to access the subscriber's property or premises.

[58 FR 11971, Mar. 2, 1993]

§ 76.802 Disposition of cable home wiring.

(a)(1) Upon voluntary termination of cable service by a subscriber in a single unit installation, a cable operator shall not remove the cable home wiring unless it gives the subscriber the opportunity to purchase the wiring at the replacement cost, and the subscriber declines. If the subscriber declines to purchase the cable home wiring, the cable system operator must then remove the cable home wiring within seven days of the subscriber's decision, under normal operating conditions, or make no subsequent attempt to remove it or to restrict its use.

(2) Upon voluntary termination of cable service by an individual subscriber in a multiple-unit installation, a cable operator shall not be entitled to remove the cable home wiring unless: it gives the subscriber the opportunity to purchase the wiring at the replacement cost; the subscriber declines, and neither the MDU owner nor an alternative MVPD, where permitted by the MDU owner, has provided reasonable advance notice to the incumbent provider that it would purchase the cable home wiring pursuant to this section if and when a subscriber declines. If the cable system operator is entitled to remove the cable home wiring, it must then remove the wiring within seven days of the subscriber's decision, under normal operating conditions, or make no subsequent attempt to remove it or to restrict its use.

(3) The cost of the cable home wiring is to be based on the replacement cost

per foot of the wiring on the subscriber's side of the demarcation point multiplied by the length in feet of such wiring, and the replacement cost of any passive splitters located on the subscriber's side of the demarcation point.

(b) During the initial telephone call in which a subscriber contacts a cable operator to voluntarily terminate cable service, the cable operator—if it owns and intends to remove the home wiring—must inform the subscriber:

(1) That the cable operator owns the home wiring;

(2) That the cable operator intends to remove the home wiring;

(3) That the subscriber has the right to purchase the home wiring; and

(4) What the per-foot replacement cost and total charge for the wiring would be (the total charge may be based on either the actual length of cable wiring and the actual number of passive splitters on the customer's side of the demarcation point, or a reasonable approximation thereof; in either event, the information necessary for calculating the total charge must be available for use during the initial phone call).

(c) If the subscriber voluntarily terminates cable service in person, the procedures set forth in paragraph (b) of this section apply.

(d) If the subscriber requests termination of cable service in writing, it is the operator's responsibility—if it wishes to remove the wiring—to make reasonable efforts to contact the subscriber prior to the date of service termination and follow the procedures set forth in paragraph (b) of this section.

(e) If the cable operator fails to adhere to the procedures described in paragraph (b) of this section, it will be deemed to have relinquished immediately any and all ownership interests in the home wiring; thus, the operator will not be entitled to compensation for the wiring and shall make no subsequent attempt to remove it or restrict its use.

(f) If the cable operator adheres to the procedures described in paragraph (b) of this section, and, at that point, the subscriber agrees to purchase the wiring, constructive ownership over the home wiring will transfer to the

subscriber immediately, and the subscriber will be permitted to authorize a competing service provider to connect with and use the home wiring.

(g) If the cable operator adheres to the procedures described in paragraph (b) of this section, and the subscriber asks for more time to make a decision regarding whether to purchase the home wiring, the seven (7) day period described in paragraph (b) of this section will not begin running until the subscriber declines to purchase the wiring; in addition, the subscriber may not use the wiring to connect to an alternative service provider until the subscriber notifies the operator whether or not the subscriber wishes to purchase the wiring.

(h) If an alternative video programming service provider connects its wiring to the home wiring before the incumbent cable operator has terminated service and has capped off its line to prevent signal leakage, the alternative video programming service provider shall be responsible for ensuring that the incumbent's wiring is properly capped off in accordance with the Commission's signal leakage requirements. See Subpart K (technical standards) of the Commission's Cable Television Service rules (47 CFR 76.605(a)(13) and 76.610 through 76.617).

(i) Where the subscriber terminates cable service but will not be using the home wiring to receive another alternative video programming service, the cable operator shall properly cap off its own line in accordance with the Commission's signal leakage requirements. See Subpart K (technical standards) of the Commission's Cable Television Service rules (47 CFR 76.605(a)(13) and 76.610 through 76.617).

(j) Cable operators are prohibited from using any ownership interests they may have in property located on the subscriber's side of the demarcation point, such as molding or conduit, to prevent, impede, or in any way interfere with, a subscriber's right to use his or her home wiring to receive an alternative service. In addition, incumbent cable operators must take reasonable steps within their control to ensure that an alternative service provider has access to the home wiring

at the demarcation point. Cable operators and alternative multichannel video programming delivery service providers are required to minimize the potential for signal leakage in accordance with the guidelines set forth in 47 CFR 76.605(a)(13) and 76.610 through 76.617, theft of service and unnecessary disruption of the consumer's premises.

(k) Definitions—Normal operating conditions—The term “normal operating conditions” shall have the same meaning as at 47 CFR 76.309(c)(4)(ii).

(l) The provisions of § 76.802 shall apply to all MVPDs in the same manner that they apply to cable operators.

[61 FR 6137, Feb. 16, 1996, as amended at 62 FR 61031, Nov. 14, 1997; 68 FR 13855, Mar. 21, 2003]

§ 76.804 Disposition of home run wiring.

(a) *Building-by-building disposition of home run wiring.* (1) Where an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises against the wishes of the MDU owner, the MDU owner may give the MVPD a minimum of 90 days' written notice that its access to the entire building will be terminated to invoke the procedures in this section. The MVPD will then have 30 days to notify the MDU owner in writing of its election for all the home run wiring inside the MDU building: to remove the wiring and restore the MDU building consistent with state law within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first; to abandon and not disable the wiring at the end of the 90-day notice period; or to sell the wiring to the MDU building owner. If the incumbent provider elects to remove or abandon the wiring, and it intends to terminate service before the end of the 90-day notice period, the incumbent provider shall notify the MDU owner at the time of this election of the date on which it intends to terminate service. If the incumbent provider elects to remove its wiring and restore the building consistent with state law, it must do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first.

nation, which ever occurs first. For purposes of abandonment, passive devices, including splitters, shall be considered part of the home run wiring. The incumbent provider that has elected to abandon its home run wiring may remove its amplifiers or other active devices used in the wiring if an equivalent replacement can easily be re-attached. In addition, an incumbent provider removing any active elements shall comply with the notice requirements and other rules regarding the removal of home run wiring. If the MDU owner declines to purchase the home run wiring, the MDU owner may permit an alternative provider that has been authorized to provide service to the MDU to negotiate to purchase the wiring.

(2) If the incumbent provider elects to sell the home run wiring under paragraph (a)(1) of this section, the incumbent and the MDU owner or alternative provider shall have 30 days from the date of election to negotiate a price. If the parties are unable to agree on a price within that 30-day time period, the incumbent must elect: to abandon without disabling the wiring; to remove the wiring and restore the MDU consistent with state law; or to submit the price determination to binding arbitration by an independent expert. If the incumbent provider chooses to abandon or remove its wiring, it must notify the MDU owner at the time of this election if and when it intends to terminate service before the end of the 90-day notice period. If the incumbent service provider elects to abandon its wiring at this point, the abandonment shall become effective at the end of the 90-day notice period or upon service termination, whichever occurs first. If the incumbent elects at this point to remove its wiring and restore the building consistent with state law, it must do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, which ever occurs first.

(3) If the incumbent elects to submit to binding arbitration, the parties shall have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The

independent expert chosen will be required to assess a reasonable price for the home run wiring by the end of the 90-day notice period. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or the alternative provider) refuses to participate, the incumbent shall have no further obligations under the Commission's home run wiring disposition procedures. If the incumbent fails to comply with any of the deadlines established herein, it shall be deemed to have elected to abandon its home run wiring at the end of the 90-day notice period.

(4) The MDU owner shall be permitted to exercise the rights of individual subscribers under this subsection for purposes of the disposition of the cable home wiring under § 76.802. When an MDU owner notifies an incumbent provider under this section that the incumbent provider's access to the entire building will be terminated and that the MDU owner seeks to use the home run wiring for another service, the incumbent provider shall, in accordance with our current home wiring rules: offer to sell to the MDU owner any home wiring within the individual dwelling units that the incumbent provider owns and intends to remove; and provide the MDU owner with the total per-foot replacement cost of such home wiring. This information must be provided to the MDU owner within 30 days of the initial notice that the incumbent's access to the building will be terminated. If the MDU owner declines to purchase the cable home wiring, the MDU owner may allow the alternative provider to purchase the home wiring upon service termination under the terms and conditions of § 76.802. If the MDU owner or the alternative provider elects to purchase the home wiring under these rules, it must so notify the incumbent MVPD provider not later than 30 days before the incumbent's termination of access to the building will become effective. If the MDU owner and the alternative provider fail to elect to purchase the home wiring, the incumbent provider must then remove the cable home wiring, under normal operating conditions, within 30 days of actual service termination, or make no subsequent

attempt to remove it or to restrict its use.

(5) The parties shall cooperate to avoid disruption in service to subscribers to the extent possible.

(b) *Unit-by-unit disposition of home run wiring:* (1) Where an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to maintain any particular home run wire dedicated to a particular unit on the premises against the MDU owner's wishes, the MDU owner may permit multiple MVPDs to compete for the right to use the individual home run wires dedicated to each unit in the MDU. The MDU owner must provide at least 60 days' written notice to the incumbent MVPD of the MDU owner's intention to invoke this procedure. The incumbent MVPD will then have 30 days to provide a single written election to the MDU owner as to whether, for each and every one of its home run wires dedicated to a subscriber who chooses an alternative provider's service, the incumbent MVPD will: remove the wiring and restore the MDU building consistent with state law; abandon the wiring without disabling it; or sell the wiring to the MDU owner. If the MDU owner refuses to purchase the home run wiring, the MDU owner may permit the alternative provider to purchase it. If the alternative provider is permitted to purchase the wiring, it will be required to make a similar election within this 30-day period for each home run wire solely dedicated to a subscriber who switches back from the alternative provider to the incumbent MVPD.

(2) If the incumbent provider elects to sell the home run wiring under paragraph (b)(1), the incumbent and the MDU owner or alternative provider shall have 30 days from the date of election to negotiate a price. During this 30-day negotiation period, the parties may arrange for an up-front lump sum payment in lieu of a unit-by-unit payment. If the parties are unable to agree on a price during this 30-day time period, the incumbent must elect: to abandon without disabling the wiring; to remove the wiring and restore the MDU consistent with state law; or to submit the price determination to

binding arbitration by an independent expert. If the incumbent elects to submit to binding arbitration, the parties shall have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring within 14 days. If subscribers wish to switch service providers after the expiration of the 60-day notice period but before the expert issues its price determination, the procedures set forth in paragraph (b)(3) of this section shall be followed, subject to the price established by the arbitrator. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or the alternative provider) refuses to participate, the incumbent shall have no further obligations under the Commission's home run wiring disposition procedures.

(3) When an MVPD that is currently providing service to a subscriber is notified either orally or in writing that that subscriber wishes to terminate service and that another service provider intends to use the existing home run wire to provide service to that particular subscriber, a provider that has elected to remove its home run wiring pursuant to paragraph (b)(1) or (b)(2) of this section will have seven days to remove its home run wiring and restore the building consistent with state law. If the subscriber has requested service termination more than seven days in the future, the seven-day removal period shall begin on the date of actual service termination (and, in any event, shall end no later than seven days after the requested date of termination). If the provider has elected to abandon or sell the wiring pursuant to paragraph (b)(1) or (b)(2) of this section, the abandonment or sale will become effective upon actual service termination or upon the requested date of termination, whichever occurs first. For purposes of abandonment, passive devices, including splitters, shall be considered part of the home run wiring. The incumbent provider may remove its amplifiers or other active devices used in the wiring if an equivalent replacement can easily be reattached. In addition, an incumbent provider removing

any active elements shall comply with the notice requirements and other rules regarding the removal of home run wiring. If the incumbent provider intends to terminate service prior to the end of the seven-day period, the incumbent shall inform the party requesting service termination, at the time of such request, of the date on which service will be terminated. The incumbent provider shall make the home run wiring accessible to the alternative provider within the 24-hour period prior to actual service termination.

(4) If the incumbent provider fails to comply with any of the deadlines established herein, the home run wiring shall be considered abandoned, and the incumbent may not prevent the alternative provider from using the home run wiring immediately to provide service. The alternative provider or the MDU owner may act as the subscriber's agent in providing notice of a subscriber's desire to change services, consistent with state law. If a subscriber's service is terminated without notification that another service provider intends to use the existing home run wiring to provide service to that particular subscriber, the incumbent provider will not be required to carry out its election to sell, remove or abandon the home run wiring; the incumbent provider will be required to carry out its election, however, if and when it receives notice that a subscriber wishes to use the home run wiring to receive an alternative service. Section 76.802 of the Commission's rules regarding the disposition of cable home wiring will apply where a subscriber's service is terminated without notifying the incumbent provider that the subscriber wishes to use the home run wiring to receive an alternative service.

(5) The parties shall cooperate to avoid disruption in service to subscribers to the extent possible.

(6) Section 76.802 of the Commission's rules regarding the disposition of cable home wiring will continue to apply to the wiring on the subscriber's side of the cable demarcation point.

(c) The procedures set forth in paragraphs (a) and (b) of this section shall apply unless and until the incumbent provider obtains a court ruling or an

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injunction within forty-five (45) days following the initial notice enjoining its displacement.

(d) After the effective date of this rule, MVPDs shall include a provision in all service contracts entered into with MDU owners setting forth the disposition of any home run wiring in the MDU upon the termination of the contract.

(e) Incumbents are prohibited from using any ownership interest they may have in property located on or near the home run wiring, such as molding or conduit, to prevent, impede, or in any way interfere with, the ability of an alternative MVPD to use the home run wiring pursuant to this section.

(f) Section 76.804 shall apply to all MVPDs.

[62 FR 61032, Nov. 14, 1997, as amended at 68 FR 13855, Mar. 21, 2003]

§ 76.805 Access to molding.

(a) An MVPD shall be permitted to install one or more home run wires within the existing molding of an MDU where the MDU owner finds that there is sufficient space to permit the installation of the additional wiring without interfering with the ability of an existing MVPD to provide service, and gives its affirmative consent to such installation. This paragraph shall not apply where the incumbent provider has an exclusive contractual right to occupy the molding.

(b) If an MDU owner finds that there is insufficient space in existing molding to permit the installation of the new wiring without interfering with the ability of an existing MVPD to provide service, but gives its affirmative consent to the installation of larger molding and additional wiring, the MDU owner (with or without the assistance of the incumbent and/or the alternative provider) shall be permitted to remove the existing molding, return such molding to the incumbent, if appropriate, and install additional wiring and larger molding in order to contain the additional wiring. This paragraph shall not apply where the incumbent provider possesses a contractual right to maintain its molding on the premises without alteration by the MDU owner.

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(c) The alternative provider shall be required to pay any and all installation costs associated with the implementation of paragraphs (a) or (b) of this section, including the costs of restoring the MDU owner's property to its original condition, and the costs of repairing any damage to the incumbent provider's wiring or other property.

[62 FR 61033, Nov. 14, 1997]

§ 76.806 Pre-termination access to cable home wiring.

(a) Prior to termination of service, a customer may: install or provide for the installation of their own cable home wiring; or connect additional home wiring, splitters or other equipment within their premises to the wiring owned by the cable operator, so long as no electronic or physical harm is caused to the cable system and the physical integrity of the cable operator's wiring remains intact.

(b) Cable operators may require that home wiring (including passive splitters, connectors and other equipment used in the installation of home wiring) meets reasonable technical specifications, not to exceed the technical specifications of such equipment installed by the cable operator; provided however, that if electronic or physical harm is caused to the cable system, the cable operator may impose additional technical specifications to eliminate such harm. To the extent a customer's installations or rearrangements of wiring degrade the signal quality of or interfere with other customers' signals, or cause electronic or physical harm to the cable system, the cable operator may discontinue service to that subscriber until the degradation or interference is resolved.

(c) Customers shall not physically cut, substantially alter, improperly terminate or otherwise destroy cable operator-owned home wiring.

(d) Section 76.806 shall apply to all MVPDs.

[62 FR 61034, Nov. 14, 1997, as amended at 68 FR 13855, Mar. 21, 2003]

Subpart N—Cable Rate Regulation

SOURCE: 58 FR 29753, May 21, 1993, unless otherwise noted.